March 15, 2001

Re: 01-0065

John F. Dunn   Nada Carrigan
AT&T Communications of Illinois, Inc.   Vice President
222 W. Adams St., Ste. 1500   AT&T Communications of Illinois, Inc.
Chicago, IL 60606   913 S. 6th St., 3rd Fl.
                                           Springfield IL 62703

Dear Sir/Madam:

        Enclosed is a copy of the Memorandum from the Hearing Examiner to the Commission regarding recommended action at the Special Open Meeting on March 14, 2001.

                               Sincerely,

                               Donna M. Caton
                               Chief Clerk

DMC:bjs
Enclosure

Docket No: 01-0065
Bench Date: 3/14/01
Deadline: 3/15/01

M E M O R A N D U M_____

TO: The Commission

FROM: Eve Moran and Sherwin Zaban, Hearing Examiners

DATE: March 13, 2001

SUBJECT: Illinois Commerce Commission
                             On Its Own Motion

                           Order designating an entity for the processing of data received
                           by the Commission under 47 CFR 52.15(f)(7), and directing the
                           provision of such data to that entity.

                           Application for Rehearing of AT&T

RECOMMENDATION: Grant AT&T Application for Rehearing.

Introduction

On January 24, 2001, the Commission opened the instant docket and, on the basis of a Staff Report, entered an Order authorizing that J. Seamus Glynn be provided information that the Commission has received and continues to receive under 47 CFR 52.15 (f)(7).

On February 23, 2001, AT&T Communications of Illinois, Inc. and AT&T Wireless PCS, LLC ("AT&T or "Applicants") filed an Application for Rehearing.

Arguments:

The Applicant sets out a number of grounds for its rehearing request.

1. AT&T notes that on November 1, 2000, the GCI filed a motion to obtain access to carriers' confidential number data in Docket 98-0847. The Applicants state that AT&T, Illinois Bell, Cellular One (Cingular), WorldCom, Nextel and Nextlink (XO) all opposed the GCI motion. On January 10, 2001, the Commission denied the GCI motion in Docket 98-0847.

According to AT&T, with the entry of the instant Order in this docket, the Commission has reversed its January 10 Order in Docket 98-0847. It has done so, AT&T claims, despite there being no new facts and no change in circumstance. The Commission has also failed to offer any explanation for the reversal. For these reasons, AT&T requests the Commission to rescind the instant Order.

2. As separate grounds for rescinding the January 24 Order, AT&T asserts that the FCC's NRO Order prohibits the Commission from disclosing carriers' confidential number data "to any entity other than the NANPA or the Commission." (AT&T Application at 2-3).

So too, AT&T claims, the Commission's reliance on Paragraph 119 of the recent NRO Order is misplaced. This provision authorizes processing of the confidential data by a neutral third-party but, AT&T alleges, GCI are not neutral. According to AT&T, GCI's non-neutral stance is reflected in the Report it submitted to the Commission on February 13, 2001.

3. Perhaps, AT&T suggests, the Commission acted in the belief that the GCI would provide assistance in the role of an independent third-party expert. The February GCI report, however, shows that not to be the case says AT&T.

AT&T maintains that the GCI"s February Report is clearly argumentative and cannot be countered by the carriers who themselves have no access to the confidential data.

4. As further grounds for its relief, AT&T maintains that the Commissions' Order is contrary to Illinois law. According to AT&T, Section 4-404 of the Public Utilities Act requires the Commission to safeguard confidential information. Providing the Confidential information of one party to that party's opponent - with no prior notification - is a clear violation of Section 4-404.

Analysis and Recommendation:

As to the first of AT&T's allegations on rehearing, regarding the reversal of positions by the Commission, the Application must fail.

The Hearing Examiners distinctly recall that in recommending dismissal of the GCI motion, they stressed procedure over substance. In other words, we made the point that the GCI motion should not be granted, if at all, in the proceeding wherein it was filed. To the extent that the Commission acted on the basis of our recommendation (and we believe it did), the instant Order is not a reversal of a prior Commission order in the strict sense.

Other arguments raised by AT&T, which state separate and distinct grounds for rehearing do have merit.

There is no doubt that the Commission has, in effect, granted the GCI request on the merits in this docket and without consideration of any opposing views. When entering the instant Order the Commission considered only the Staff Report filed on January 23, 2001. It did not allow for any comments by the affected carriers. It also did not transfer the pleadings from Docket 98-0847 into the instant docket whereas its order sets out essentially the relief requested by the GCI in those pleadings. This is problematic for denying affected parties notice and an opportunity to be heard.

The concern for neutrality raised by AT&T stems largely from the fact that the Order is too vague. The Order simply states that the data "be processed in such a manner as to maximize the usefulness to the Commission of such data." (Order at 5). This language imposes no restrictions and offers no guidance. Similarly, the Protective Order states that the restricted data shall be used "solely in connection with the function of assisting the Commission with the processing of the restricted data." We are not convinced that this has been the case or that this language is sufficient protection for the "use" of the data.

As it stands, the Order fails to outline the exact purposes or framework for release of the confidential information to GCI . It sets no guidelines or restrictions for the use, packaging and presentation of that information. There is no directive to maintain neutrality in the process. There is no suggestion to code carrier names in any reports. Nor does the Order set out any limits on the forum in which such presentation would be made.

This utter vagueness and the problems that follow therefrom warrant a grant of rehearing for purposes of amending, if not rescinding, the Order.

EM/SZ:fs